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of the State of California  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Against:

**JOSE M. COLINA**  
9405 Pennywood Road  
Santee, CA 92071

Certified Public Accountant  
Certificate No. CPA 57246

Respondent.

CASE NO. D1-2000-20

**DEFAULT DECISION AND  
ORDER; DECLARATION OF  
DEPUTY ATTORNEY  
GENERAL KAREN GORDON**

Jose M. Colina (hereinafter "Respondent") was served with the following:  
Petition to Revoke Probation; Statement to Respondent; Notice of Defense, as provided by  
Government Code Sections 11503 and 11505; Accusation No. AC-2000-20, filed May 31, 2000;  
Stipulation in Settlement and Decision No. AC-2000-20, adopted on June 21, 2000. Respondent  
failed to file a Notice of Defense, pursuant to Government Code Section 11506. Respondent is in  
default. The default of Respondent having been duly noted, the California Board of Accountancy  
(hereinafter "Board") has determined that Respondent waived his right to a hearing to contest the

merits of the Petition to Revoke Probation. Further, this Board will take action on the Petition to Revoke Probation and evidence herein without a hearing, and makes the following findings of fact.

#### **FINDINGS OF FACT**

1. The Petition to Revoke Probation was made and filed on March 26, 2002, by Carol B. Sigmann, in her official capacity as Executive Officer of the Board, Department of Consumer Affairs, State of California.

2. On or about November 16, 1990, the Board issued Certified Public Accountant Certificate No. 57246 to Respondent. Said license was renewed on "inactive" status on or about August 16, 2001, upon receipt of the requisite license renewal fee. The license will expire on July 31, 2003.

3. Respondent's license was disciplined by the Board in its order dated June 21, 2000, in Case No. AC-2000-20. Pursuant to Stipulation in Settlement and Decision No. AC-2000-20, the licensee was placed on a three year probation effective July 21, 2000. Respondent admitted the violations charged in the Accusation. True and correct copies of the Accusation and Stipulation in Settlement and Decision are attached hereto as Exhibit A and are incorporated herein as though fully set forth.

4. The Stipulation in Settlement and Decision provides, among other things, that Respondent's certificate is revoked, with said revocation stayed and Respondent placed upon a three (3) year probation on terms and conditions including, but not limited to, the following.

"2. Respondent shall submit written reports to the Board within ten (10) days of completion of each quarter on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

///

1                   “4.     Respondent shall comply fully with the terms and conditions of the  
2                   probation imposed by the Board and shall cooperate fully with  
3                   representatives of the Board in its monitoring and investigation of  
4                   Respondent’s compliance with probation terms and conditions.

5                   “9.     Respondent shall reimburse the Board \$3,400.00 for its  
6                   investigative and prosecution costs. Full payment shall be made  
7                   within sixty (60) days of the effective date of this Decision, unless  
8                   within that time, Respondent requests payment of the amount on a  
9                   payment schedule to be determined at the discretion of the Board  
10                  or its designated representatives. In the event that a payment  
11                  schedule is approved, the final payment shall be made no later than  
12                  one hundred (100) days prior to the termination of the third year of  
13                  Respondent’s probation.

14               “11.    If Respondent violates probation in any respect, the Board, after  
15               giving Respondent notice and an opportunity to be heard, may  
16               revoke probation and carry out the disciplinary order that was  
17               stayed. If an Accusation or Petition to Revoke Probation is filed  
18               against Respondent during probation, the Board shall have  
19               continuing jurisdiction until the matter is final, and the period of  
20               probation shall be extended until the matter is final.”<sup>1</sup>

### 21                                   **DETERMINATION OF ISSUES**

22                   Based on the foregoing Findings of Fact and, as set forth in paragraphs 15 through  
23                   19 of the Accusation, Respondent’s license is subject to discipline, pursuant to Section 5100(c) of  
24                   the Business and Professions Code (hereinafter “Code”) for gross negligence, Code Sections  
25                   5050 and 5055 for engaging in the practice of public accountancy with an expired license, and  
26                   Code Section 5100(f) for willful violation of Code sections or Board rules, especially as those  
27                   sections interact with Sections 3 and 58 of the California Code of Regulations, which requires  
written notification to the Board of a change of address and conformity with professional  
standards, respectively. Respondent has violated the terms of probation, set forth in the  
Stipulation in Settlement and Decision, as discussed below.

### **FAILURE TO PAY COSTS**

                  5.     Grounds exist for vacating the stay heretofore issued and reimposing the  
order of revocation of Respondent’s certificate. Respondent has not submitted quarterly  
payments of \$144.66 per month since October 2001.

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1. The paragraph numbers refer to the numbering in the Stipulation in Settlement and Decision in Case  
No. AC-2000-20 attached as Exhibit A.

1                   6.       Respondent agreed to commence reimbursing costs of \$3,400.00 at the  
2 rate of \$141.66 per month beginning in January 2001. He remitted payments of \$425.46 on  
3 March 23, 2001; \$283.32 on June 6, 2001; \$285.00 on August 17, 2001; and, \$283.32 on October  
4 1, 2001. No further payments have been made to date.

5                                   **FAILURE TO SUBMIT QUARTERLY REPORTS**

6                   7.       Grounds exist for vacating the stay heretofore issued and reimposing the  
7 order of revocation of Respondent's certificate. Respondent failed to submit quarterly written  
8 reports within ten (10) days of completion of the quarter, as required under the terms of his  
9 probation.

10                   8.       The quarterly report due by October 10, 2000, was submitted on December  
11 12, 2000; the quarterly report due by January 10, 2001, was submitted on February 20, 2001; the  
12 quarterly report due by April 10, 2001, was submitted on June 7, 2001; the quarterly report due  
13 by July 10, 2001, was submitted on August 17, 2001. No quarterly reports have been received  
14 since October 2001.<sup>2</sup>

15                                   **RESPONDENT'S LACK OF COOPERATION**

16                   9.       Grounds exist for vacating the stay heretofore issued and reimposing the  
17 order of revocation of Respondent's certificate. Respondent failed to comply with the terms of  
18 his probation requiring cooperation with the Board. This lack of cooperation includes his failure  
19 to make cost reimbursement payments and his failure to submit required quarterly reports.

20                                   **SUFFICIENCY AND SERVICE OF PETITION TO REVOKE PROBATION**

21                   The Declaration of Deputy Attorney General Karen Gordon, attached hereto and  
22 herein incorporated by reference, states that the evidence is sufficient to support the filing of a  
23 Default Decision in this case and that service of the Petition to Revoke Probation on Respondent  
24 was accomplished in accordance with the California Administrative Procedure Act.

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27                   2. The information in the quarterly reports is necessary to allow the Board to supervise  
Respondent's activities during probation so that the Board may properly protect the public  
interest.

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8  
9 **BEFORE THE**  
**BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation )  
Against: )

CASE NO. D1-2000-20

13 **JOSE M. COLINA** )  
14 9405 Pennywood Road )  
Santee, CA 92071 )

15 Certified Public Accountant )  
16 Certificate No. CPA 57246 )

Respondent. )

**DECLARATION OF DEPUTY**  
**ATTORNEY GENERAL**  
**KAREN GORDON REGARDING**  
**SUFFICIENCY AND SERVICE**  
**OF PETITION TO REVOKE**  
**PROBATION**

17  
18  
19  
20 I, KAREN GORDON, declare:

21 1. I am a Deputy Attorney General employed by the State of California,  
22 Department of Justice. My business address is 110 West A Street, Suite 1100, San Diego,  
23 California 92101. I am one of the attorneys of record for the Complainant in this proceeding.

24 2. I have reviewed the evidence in this case and find it legally sufficient to  
25 support the Default Decision filed in this matter.

26 3. Jose M. Colina (hereinafter "Respondent") has been a licensee of the  
27 California Board of Accountancy (hereinafter "Board") and was issued Certificate No. CPA

1 57246 on November 16, 1990. The certificate was renewed on "inactive" status on or about  
2 August 16, 2001. It will expire on July 31, 2003. The address of record on file with the Board  
3 for Respondent is 9405 Pennywood Road, Santee, California, 92071.

4 4. On May 31, 2000, Accusation No. AC-2000-20 was filed by the Board  
5 against Respondent. Thereafter, Respondent entered into a Stipulation in Settlement and  
6 Decision, placing him on probation. Respondent has violated various provisions of the  
7 Stipulation in Settlement and Decision. On March 26, 2002, the Board filed a Petition to Revoke  
8 Probation, Case No. D1-2000-20. On April 3, 2002, at my direction, the Petition, together with  
9 supporting papers and information, was sent via first class and certified mail, No. 7000 0520  
10 0025 1944 4014, to Jose M. Colina, 9405 Pennywood Road, Santee, California 92071.

11 5. A receipt for the packet sent by certified mail was received by  
12 this office. The certified mail return receipt indicated that the packet was unclaimed.

13 6. No response to these mailings has been received by this office, nor has a  
14 Notice of Defense been filed by Respondent. Per Government Code Section 11506, a  
15 Respondent has fifteen (15) days after receiving a copy of the Accusation to respond. If  
16 Respondent fails to do so, Respondent waives the right to a hearing.

17 Furthermore, pursuant to Government Code Section 11505(c), service is effective  
18 when the Accusation is mailed to the licensee at the last address filed with the Board, whether or  
19 not the licensee has actual knowledge of the Accusation. In this case, service of the Petition to  
20 Revoke Probation was effective when the Petition was mailed to Respondent at his last address  
21 filed with the Board. Respondent failed to respond to the Petition to Revoke Probation within  
22 fifteen (15) days of mailing, or at any other time.

23 The statements contained herein are based upon my personal knowledge and, if  
24 called as a witness in this matter, I could and would testify competently thereto. I declare under  
25 penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

26 Executed this 25<sup>th</sup> day of May, 2002, at San Diego, California.

27   
KAREN GORDON  
Deputy Attorney General

BILL LOCKYER, Attorney General  
of the State of California  
KAREN GORDON, State Bar No. 137969  
Deputy Attorney General  
Department of Justice  
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**BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Against:

**JOSE M. COLINA**  
9405 Pennywood Road  
Santee, CA 92071

Certified Public Accountant  
Certificate No. CPA 57246

Respondent.

CASE NO. D1-2000-20

**PETITION TO REVOKE  
PROBATION**

Complainant, in a Petition to Revoke Probation Against Jose M. Colina, alleges as follows:

**PARTIES**

1. The Complainant, Carol B. Sigmann, is the Executive Officer of the California Board of Accountancy (hereinafter "Board") and makes this Petition to Revoke Probation in her official capacity.

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2. On or about November 16, 1990, the Board issued Certified Public Accountant Certificate No. 57246 to Jose M. Colina (hereinafter "Respondent"). Said license was renewed on "inactive" status on or about August 16, 2001, upon receipt of the requisite license renewal fee. The license will expire on July 31, 2003.

## JURISDICTION

3. Under California Business and Professions Code §5100 ("Code"), the Board has the authority to bring an administrative disciplinary proceeding against any person who has been issued a license and who has violated a provision under Division 3, Chapter 1, §5000, *et. seq.*, of the Code.

**PRIOR DISCIPLINE**

4. On or about May 31, 2000, Complainant, in her official capacity, issued an Accusation, Case No. AC-2000-20, against Respondent. Case No. AC-2000-20 was resolved by a Stipulation in Settlement and Decision, which became effective on July 21, 2000. The Stipulation in Case No. AC-2000-20 operated to revoke Respondent's CPA license, stay the revocation, and place Respondent on probation with the Board for three years under specified terms and conditions.

5. The disciplinary terms and conditions of probation in the Stipulation that resolved Case No. AC-2000-20 include, *inter alia*, the following:

“2. Respondent shall submit written reports to the Board within ten (10) days of completion of each quarter on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent’s compliance with the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

/ / /

///

1                   “9.     Respondent shall reimburse the Board \$3,400.00 for its  
2                   investigative and prosecution costs. Full payment shall be made within sixty (60)  
3                   days of the effective date of this Decision, unless within that time, Respondent  
4                   requests payment of the amount on a payment schedule to be determined at the  
5                   discretion of the Board or its designated representatives. In the event that a  
6                   payment schedule is approved, the final payment shall be made no later than one  
7                   hundred (100) days prior to the termination of the third year of Respondent’s  
8                   probation.

9                   “11.    If Respondent violates probation in any respect, the Board, after  
10                  giving Respondent notice and an opportunity to be heard, may revoke probation  
11                  and carry out the disciplinary order that was stayed. If an Accusation or Petition  
12                  to Revoke Probation is filed against Respondent during probation, the Board shall  
13                  have continuing jurisdiction until the matter is final, and the period of probation  
14                  shall be extended until the matter is final.”

15                                   **FIRST CAUSE OF PETITION**

16                                   **FAILURE TO PAY COSTS**

17                  6.     Complainant incorporates herein by this reference the Preamble and each  
18                  of the allegations set forth in Paragraphs 1 through 5 above.

19                  7.     Respondent has failed to pay to the Board cost reimbursement payments,  
20                  as required in Paragraph 9 of the Stipulation. Respondent agreed to commence reimbursing costs  
21                  of \$3,400.00 at the rate of \$141.66 per month beginning in January 2001. He remitted payments  
22                  of \$425.46 on March 23, 2001; \$283.32 on June 6, 2001; \$285.00 on August 17, 2001; and,  
23                  \$283.32 on October 1, 2001. No further payments have been made to date. Respondent has  
24                  thereby violated the terms of his probation and has subjected his certificate to discipline as set  
25                  forth in the Stipulation Order.

26                  ///

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**BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:	)	NO. AC-2000-20
	)	
JOSE M. COLINA	)	
10794 Riderwood Terrace, Unit D	)	
Santee, California 92071	)	STIPULATION IN
	)	SETTLEMENT AND DECISION
Certified Public Accountant	)	
Certificate No. CPA 57246	)	
	)	
Respondent.	)	

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the California State Board of Accountancy (hereinafter the "Board"), the parties submit this Stipulation and Decision to the Board for its approval and adoption as the final disposition of the Accusation.

The parties stipulate the following is true:

1. Accusation No. AC-2000-20 is currently pending before the Board against Jose M. Colina (hereinafter "Respondent").
2. On or about November 16, 1990, the Board issued Certified Public Accountant Certificate No. 57246 to Respondent. The license expired on July 31, 1995, and has not been renewed.

1                   3.       Complainant, Carol B. Sigmann, Executive Officer of the Board, is  
2 represented in this matter by Bill Lockyer, Attorney General of the State of California, by and  
3 through Karen Gordon, Deputy Attorney General.

4                   4.       Respondent is not represented by legal counsel in this matter.

5                   5.       Respondent has received and read the Accusation in Case No.  
6 AC-2000-20, presently pending before the Board.

7                   6.       Respondent understands the nature of the charges alleged in the  
8 Accusation and that the charges and allegations constitute cause for imposing discipline upon  
9 Respondent's license to practice public accountancy. Respondent is fully aware of his right to a  
10 hearing on the charges and allegations contained in the Accusation and the right to request  
11 reconsideration or appeal, as well as all other rights accorded pursuant to the California Business  
12 and Professions Code and Government Code. Respondent freely and voluntarily waives all of  
13 these rights.

14                  7.       Respondent understands that a hearing could be held before the Board to  
15 determine the sufficiency and the truth of the Accusation, the propriety of any penalty to be  
16 imposed by the Board, and that by entering into this Stipulation, Respondent gives up the right to  
17 a hearing before the Board and to present legal and factual arguments for consideration by the  
18 Board.

19                  8.       Respondent understands that he has the right to use compulsory process to  
20 procure the presence of witnesses at a hearing on the Accusation or to procure documentary  
21 evidence to be presented on Respondent's behalf, and that by entering into this Stipulation,  
22 Respondent gives up the right to compulsory process.

23                  9.       Respondent understands that at a hearing, he could introduce relevant  
24 testimony and exhibits on his own behalf and in mitigation, including exculpatory evidence. At a  
25 hearing, Respondent would have the opportunity to rebut the evidence against him. Respondent  
26 understands that by entering into this Stipulation, he gives up the right to call witnesses or  
27 introduce evidence on his own behalf or in mitigation, or to rebut the evidence against him.

1                   10.     Respondent admits the truth of each and every allegation of Accusation  
2 No. AC-2000-20, and agrees that he has therefore subjected his license to discipline. Respondent  
3 agrees to the Board's imposition of penalty, as set out in the Order below.

4                   11.     Admissions made by Respondent herein are for the purposes of this  
5 proceeding, for any other disciplinary proceedings by the Board, and for any petition for  
6 reinstatement, reduction of penalty, or application for relicensure, and shall have no force or effect  
7 in any other case or proceeding.

8                   12.     It is understood by Respondent that, in deciding whether to adopt this  
9 Stipulation, the Board may receive oral and written communications from its staff and the  
10 Attorney General's office. Communications pursuant to this paragraph shall not disqualify the  
11 Board or other persons from future participation in this or any other matter affecting Respondent.  
12 In the event this settlement is not adopted by the Board, the Stipulation will not become effective  
13 and may not be used for any purpose, except for this paragraph, which shall remain in effect.

14                   13.     The parties agree that facsimile copies of this Stipulation, including  
15 facsimile signatures of the parties, may be used in lieu of original documents and signatures. The  
16 facsimile copies will have the same force and effect as originals.

17                   14.     In consideration of the foregoing admissions and findings, the parties agree  
18 that the Board may, without further notice or formal proceedings, issue and enter an Order as  
19 follows:

20  
21                                   ORDER

22                   A.     IT IS HEREBY ORDERED that Certified Public Accountant Certificate No.  
23 57246, issued to Jose M. Colina, is revoked. However, the revocation is stayed and Respondent  
24 is placed on probation for three (3) years upon the following terms and conditions.

25                   1.     OBEY ALL LAWS

26                                 Respondent shall obey all federal, California, other states' and local laws,  
27 including those rules relating to the practice of public accountancy in California.

1                   2.     SUBMIT WRITTEN REPORTS

2                   Respondent shall submit written reports to the Board within ten (10) days  
3 of completion of each quarter on a form obtained from the Board. Respondent shall submit, under  
4 penalty of perjury, such other written reports, declarations, and verification of actions as are  
5 required. These declarations shall contain statements relative to Respondent's compliance with  
6 the terms and conditions of probation. Respondent shall immediately execute all release of  
7 information forms as may be required by the Board or its representatives.

8                   3.     PERSONAL APPEARANCES

9                   Respondent shall, during the period of probation, appear in person at  
10 interviews/meetings as directed by the Board or its designated representatives, provided such  
11 notification is accomplished in a timely matter.

12                  4.     COMPLY WITH PROBATION

13                  Respondent shall comply fully with the terms and conditions of the  
14 probation imposed by the Board and shall cooperate fully with representatives of the Board in its  
15 monitoring and investigation of Respondent's compliance with probation terms and conditions.

16                  5.     COMPLY WITH CITATIONS

17                  Respondent shall comply with all final orders resulting from Citations  
18 issued by the Board.

19                  6.     TOLLING OF PROBATION FOR OUT-OF-STATE  
20                           RESIDENCE/PRACTICE

21                  In the event Respondent should leave California to reside or practice  
22 outside this State, Respondent must notify the Board in writing of the dates of departure and  
23 return. The period of non-California residency or practice outside the State shall not apply to  
24 reduction of the probationary period, or of any suspension. No obligation imposed herein shall be  
25 suspended or otherwise affected by such period of out-of-state residence or practice, except at the  
26 written direction of the Board.

27                  7.     RENEW LICENSE/MAINTAIN CURRENT LICENSE

                  Respondent must renew his Certified Public Accountant license and must

1 maintain that license on current status during the term of his probation. Prior to engaging in  
2 public accounting practice, as defined in Section 5051 of the Business and Professions Code,  
3 Respondent must convert the license to "active" status, as described in Section 87.1 of the  
4 California Code of Regulations.

#### 5 8. CONTINUING EDUCATION COURSES

6 Respondent shall complete forty (40) hours of continuing education  
7 courses. Required courses and the time for completion thereof shall be at the discretion of the  
8 Board or its designated representatives. Failure to satisfactorily complete the required continuing  
9 education courses as scheduled, or failure to complete this requirement no later than one hundred  
10 (100) days prior to termination of probation, shall constitute a violation of probation

#### 11 9. COST REIMBURSEMENT

12 Respondent shall reimburse the Board \$3,400.00 for its investigative and  
13 prosecution costs. Full payment shall be made within sixty (60) days of the effective date of this  
14 Decision, unless within that time, Respondent requests payment of the amount on a payment  
15 schedule to be determined at the discretion of the Board or its designated representatives. In the  
16 event that a payment schedule is approved, the final payment shall be made no later than one  
17 hundred (100) days prior to the termination of the third year of Respondent's probation.

#### 18 10. SUPERVISED PRACTICE

19 At Respondent's expense, any audit, review, or compilation issued by  
20 Respondent during the probationary period must be reviewed by another licensee prior to  
21 issuance. The reviewing Certified Public Accountant chosen by Respondent must be approved by  
22 the Board, or its designee.

#### 23 11. VIOLATION OF PROBATION

24 If Respondent violates probation in any respect, the Board, after giving  
25 Respondent notice and an opportunity to be heard, may revoke probation and carry out the  
26 disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed  
27 against Respondent during probation, the Board shall have continuing jurisdiction until the matter



1 is final, and the period of probation shall be extended until the matter is final.

2 12. COMPLETION OF PROBATION

3 Upon successful completion of probation, Respondent's license will be  
4 fully restored.


5 B. This Stipulation shall be subject to the approval of the Board. If the Board fails to  
6 adopt this Stipulation as its Order, the Stipulation shall be of no force or effect for either party.

7  
8 ENDORSEMENT

9 We concur in the Stipulation and Order.

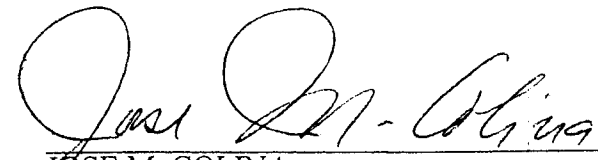
10 DATED: 6-6-00

11 BILL LOCKYER  
12 Attorney General of the  
13 State of California

14   
15 KAREN GORDON  
16 Deputy Attorney General  
17 Attorneys for Complainant

18 I have carefully read and fully understand the Stipulation and Order set forth  
19 above. I understand that in signing this Stipulation, I am waiving my right to a hearing on the  
20 charges set forth in the Accusation on file in this matter. I further understand that in signing this  
21 Stipulation, the Board may enter the foregoing Order placing certain requirements, restrictions,  
22 and limitations on my right to practice public accountancy in the State of California. I agree that a  
23 facsimile copy of this Stipulation, including a facsimile copy of my signature, may be used with the  
24 same force and effect as the original.

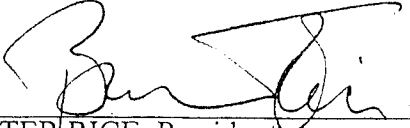
25 DATED: 6/6/00

26   
27 JOSE M. COLINA  
Respondent

1 DECISION AND ORDER  
2 OF THE BOARD OF ACCOUNTANCY

3 The foregoing Stipulation and Order, in Case No. AC-2000-20, is hereby adopted  
4 as the Order of the California State Board of Accountancy. An effective date of July 21,  
5 2000, has been assigned to this Decision and Order.

6 Made this 21 day of June, 2000.

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9 BAXTER RICE, President  
10 FOR THE BOARD OF ACCOUNTANCY  
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**BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**STATUTES AND RULES**

3. Section 5100 of the California Business and Professions Code (hereinafter "Code") provides, in pertinent part, that after notice and hearing the Board may revoke, suspend, or refuse to renew any permit or certificate for unprofessional conduct, which includes, but is not limited to, one or any combination of the following:

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of bookkeeping operations;

(f) Willful violation of any provision of the Accountancy Act or Board Rules.

4. Section 5050 of the Code states that no person shall engage in the practice of public accountancy in this State unless such person is the holder of a valid permit to practice public accountancy issued by the Board.

5. Section 5055 of the Code provides, in part, that any person who has received from the Board a certificate of certified public accountant may, subject to section 5051, be styled and known as a "certified public accountant" and may use the abbreviation "C.P.A." No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant.

6. Section 5062 of the Code states that a licensee shall issue a report conforming to professional standards upon completion of a compilation, review, or audit of financial statements.

7. Section 5070.6 of the Code provides, in part, that an expired license may be renewed at any time within five years after its expiration date.

8. Section 118(b) of the Code provides that the "suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary

1 proceeding against the licensee upon any ground provided by law or to enter an order suspending or  
2 revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

3           9.       Section 5107 of the Code provides, in part, that the Executive Officer of the  
4 Board may request the administrative law judge, as part of the proposed decision in a disciplinary  
5 proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct, in  
6 violation of Section 5100(c), to pay to the Board all reasonable costs of investigation and prosecution  
7 of the case, including, but not limited to, attorneys’ fees. The Board shall not recover costs incurred  
8 at the administrative hearing.

9           10.      Section 3 of Title 16 of the California Code of Regulations (“CCR”) states  
10 that each licensee shall notify the Board in writing of any change in his or her address of record within  
11 30 days after the change.

12           11.      Section 58 of the CCR provides that a licensee engaged in the practice of  
13 public accountancy shall comply with all applicable professional standards, including, but not limited  
14 to, generally accepted accounting principles and generally accepted auditing standards.

### 15                                   **PROFESSIONAL STANDARDS**

16           12.      Generally accepted accounting principles (“GAAP”) are derived from various  
17 authoritative sources including, without limitation, the Financial Accounting Standards Board  
18 (“FASB”), which issues Statements of Financial Accounting Standards (“SFAS”), codified by SFAS  
19 number, and the Accounting Principles Board (“APB”), predecessor to the FASB, which issued  
20 numbered Opinions. Relevant GAAP include SFAS Nos. 13 (“Accounting for Leases”), 95  
21 (“Statement of Cash Flows”), and 117 (“Financial Statements for Not-for-Profit Organizations”), as  
22 well as APB Opinion No. 22 (“Disclosure of Accounting Policies”).

23           13.      Generally accepted auditing standards (“GAAS”) appear in Statements on  
24 Auditing Standards (“SAS”), codified by the AICPA by AU number. Pertinent sections include,  
25 without limitation, AU Sections 508 (“Reports on Audited Financial Statements”) and 551  
26 (“Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted  
27 Documents”).

## CHARGES AND ALLEGATIONS

14. By reason of the following facts, Respondent has subjected his license to discipline, pursuant to Code Section 5100(c) for gross negligence and Code Section 5100(f) for willful violation of Code sections or Board rules, especially as those sections interact with Code Section 5062 and CCR Section 58, which require conformity with professional standards.

### Audit of California Area Local #4635--American Postal Workers Union, For the Year Ended December 31, 1996

15. Respondent performed an audit of the financial statements of California Area Local #4635--American Postal Workers Union ("APWU"), for the year ended December 31, 1996. On or about July 30, 1997, Respondent issued an auditor's report, in connection with his audit of the APWU. The report is not in compliance with GAAS, as set forth below.

a. The auditor's report issued by Respondent does not contain a qualified opinion, despite the fact that there is a material departure from GAAP. Depreciation is calculated using the Accelerated and Modified Accelerated Cost Recovery Systems, which are tax depreciation methods, not acceptable for financial reporting purposes. AU Section 508.35-.57 states that when financial statements are materially affected by a departure from GAAP, and the auditor has audited the statements in accordance with GAAS, a qualified or adverse opinion should be expressed and the basis therefore should be stated in the auditor's report.

b. The auditor's report does not state the years for which comparative financial statements are presented. AU Section 508.06 provides that each financial statement audited should be identified in the introductory paragraph of the auditor's report.

c. The financial statements include schedules that are not part of the basic financial statements: for example, the schedule of advances and prepaid expenses, the schedule of operating expenses, and monthly comparative statements of receipts and expenses for 1996. Respondent does not report on this information. AU Section 551.06-.11 states that when an auditor submits a document containing audited financial statements to his client or to others, he has a responsibility to report on all the information included in the document.

1           16.     The audited financial statements do not include a statement of activities or a  
2 statement of cash flows. Instead, a statement of sources and applications of cash is presented. SFAS  
3 No. 117 specifies that a complete set of financial statements for a nonprofit organization should  
4 include a statement of financial position, a statement of activities, and a statement of cash flows.  
5 SFAS No. 95 requires presentation of a statement of cash flows, as a basic financial statement, for  
6 each period for which both a statement of financial position and a statement of activities is presented.

7           17.     The audited financial statements for the APWU, for the year ended December  
8 31, 1996, exclude required disclosures as follows.

9                 a.     There is no description of all significant accounting policies adopted  
10 and followed by the organization, as required by APB Opinion No. 22.

11                b.     With respect to the operating lease, there is no disclosure of future  
12 minimum rental payments required as of the date of the latest statement of financial position presented  
13 in the aggregate and for each of the five succeeding fiscal years, as well as the total of future minimum  
14 rentals to be received under noncancelable subleases as of the date of the latest statement of financial  
15 position. SFAS No. 13 requires these disclosures.

16                c.     No information is presented about expenses reported by their functional  
17 classification. SFAS No. 117 requires that nonprofit organizations provide information about  
18 expenses reported by their functional classification either in the statement of activities or in the notes  
19 to the financial statements.

#### 20                                 OTHER VIOLATIONS

21           18.     Respondent has subjected his license to discipline, pursuant to Code  
22 Section 5100(f), on the grounds of unprofessional conduct for violating Sections 5050 and 5055, by  
23 reason of the following acts. In or about July 1997, Respondent held himself out as a certified public  
24 accountant and engaged in public accounting practice, by performing an audit of the APWU and  
25 issuing an independent auditor's report thereon, with an expired CPA license.

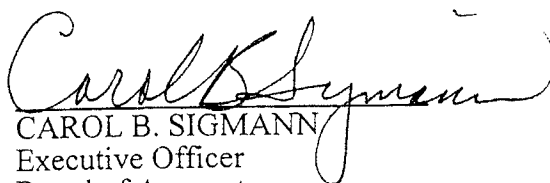
26           19.     Respondent is further subject to discipline, pursuant to Code Section 5100(f),  
27 for failing to notify the Board of his change of address, in violation of Section 3 of the CCR.

**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following said hearing, the Board issue a Decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certificate No. 57246, heretofore issued to Respondent;
2. Awarding the Board costs, as provided by statute; and,
3. Taking such other and further action as the Board deems proper.

DATED: May 31, 2000

  
CAROL B. SIGMANN  
Executive Officer  
Board of Accountancy  
Department of Consumer Affairs  
State of California

Complainant